

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published August 17, 2007]

NOTICE OF PROPOSED RULEMAKING

AB 1515, Forest Fire Prevention Exemption, 2007

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend 14 CCR § 1038(i) Exemption

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 A.M., on Wednesday, October 10, 2007, at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., Monday, October 1, 2007. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator

P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to implement legislative amendments to Public Resource Code (PRC) 4584 (k) authorized under Assembly Bill (AB) 1515. This legislation will, if passed, authorize the Board to modify fuel treatment standards and other requirements of the Forest Fire Prevention Exemption contained in 14 CCR 1038(i). This Forest Fire Prevention Exemption exempts persons who conduct timber operations from preparing and submitting Timber Harvest Plans, completion reports, and stocking reports when harvesting trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns.

SPECIFIC PURPOSE OF THE REGULATION

The primary purpose of the proposed regulation is to modify the fuel treatment standards to reduce economic impacts while reducing the wildfire hazard in the treated forest areas. The amendments modify fuel treatment standards for economic efficiency, delete the four foot flame length standard, establish new treatment standards that reduce fire hazards,

clarify treatment requirements for better compliance and consistency, and establish a rule extension period. Substantive requirements and limitations of the proposed regulation include:

Subsection 1038 (i) (6) is amended to allow sample marking of trees to be harvested or retained. Sample marking would be permitted only in certain situations such as forest types with homogeneous characteristics similar to plantations. Sampling marking is expected to reduce cost of implementation as fewer trees would be designated with a paint stripe and stump mark. The subsection is also amended to focus marking and harvesting prescriptions on the need for wildlife habitat requirements valuable to long term wildlife populations.

Subsection 1038 (i) (8) is amended to clarify how the maximum tree diameter size permitted to be harvested shall be measured for inspection purposes. The amendment specifies the maximum diameter shall be measured from outside bark of the stump. The amendment improves enforceability of the regulation and reduces confusion for inspectors during compliance inspections.

Subsection 1038 (i) (10) (A) modifies fuel treatment standards by incorporating Board adopted “defensible space” guidelines found in 14 CCR 1299. The proposed amendments require certain separation or spacing between surface debris, shrub, and smaller tree fuels after harvesting. The proposed amendments would be applicable to areas within 500 feet of homes or firebreaks. The proposed amendments 1) provide hazard reduction for fuels which must be treated to avoid fire spreading to the larger trees, 2) provide fire intensity conditions (heat levels) that allow fire fighting crews to take direct suppression tactics for some forest settings, 3) reduce economic impacts and costs incurred by landowners by permitting efficient fuel removal, 4) diminish the likeliness that soil erosion environmental effects would occur due to landowners “cleaning” the forest floor, 5) increase retention of wildlife habitat in the form of hiding cover for small animals, and 6) improve forest resistance to invasive species by allowing forest floor vegetation cover to be retained.

Subsection 1038 (i) (10) (B) focuses on reducing the number of trees per acre to eliminate overstocking of trees, reducing the spread of fire from tree to tree, and improving forest health. It applies to areas further than 500 feet from homes or fuelbreaks. The requirement specifies retaining no more than 200 trees per acre, and reducing depth of slash created by harvesting to a maximum depth of 9 inches. The proposed amendments ensure that an adequate number of trees are removed to achieve fire hazard reduction goals for the tree portion of the fuel profile. It will substantially reduce harvesting operation costs by eliminating the requirement for removal of brush or surface debris found on the site prior to harvesting.

Subsection 1038 (i) (11) deletes the “four foot” flame length requirement with standards in subsection (10) (A) and (B). Additionally, the proposed amendments adds clarification of timing of completion of fuel treatment requirements. The amendment clarifies that slash and fuels must be treated within 120 days of commencement of operations (except for burning) in any area where operational treatments have begun,

rather than in the entire exemption project area. The amendment ensures that timely completion of fuel treatment is accomplished.

Subsection 1038 (i) (13) requires projects conducted in the Lake Tahoe Region to comply with resource protection standards applicable to Lake Tahoe Region exemptions under 14 CCR 1038(f). The resource protection standards applicable to Lake Tahoe Region are different from requirements for exemptions in other parts of the State. The amendment improves regulatory consistency.

Subsection 1038 (i) (15) provides an expiration date of January 1, 2008, after which this class of exemption would be terminated. This expiration provides the Board with the opportunity to revise the regulation to improve effectiveness, evaluate the extent of the fuel hazard exemptions completed, and adjust the exemption to avoid any long term unintended consequences.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. Small businesses should benefit from the reduction in regulatory requirements resulting from filing of an Emergency Notice instead of a Timber Harvest Plan for conducting operations under this regulation.
- Significant effect on housing costs: None are known.

- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

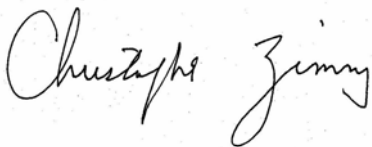
http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection
File: 45 Day Notice AB 1515 8_7_07